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Letter dated 16 March 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 4 October 2002 (S/2002/1159). The Counter-Terrorism Committee has received the attached supplementary report from Lesotho submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 15 March 2004 from the Permanent Mission of Lesotho to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Kingdom of Lesotho to the United Nations presents its compliments to the Committee, and has the honour to transmit the second report of the Government of the Kingdom of Lesotho regarding measures pursuant to resolution 1373 (2001) (see enclosure).

Enclosure

KINGDOM OF LESOTHO

SECOND REPORT TO THE UNITED NATIONS SECURITY COUNCIL COUNTER-TERRORISM COMMITTEE

It will be recalled that it was indicated in our earlier report (S/2002/681), that Lesotho does not yet have the necessary legislation to address issues related to terrorism, and with particular reference to the financing of terrorism as required by the Security Council Resolution 1373.

However, the **Central Bank of Lesotho** is well aware of these concerns and has put some administrative measures in place to detect and address such situations should they arise. Efforts are underway to identify the existing legislative gaps and to prepare the necessary material for consideration by Cabinet and subsequently Parliament.

There is in effect **an inter-ministerial counter terrorism committee.** This is composed of representatives of key departments involved in the development and implementation of counter-terrorism legislation and related measures. These are: Foreign Affairs, Law and Constitutional Affairs, Justice, Home Affairs, Civil Aviation, Police, Defence, and the Central Bank.

As a further step in this process, the Ministry of Foreign Affairs as the overall chairperson of the inter-ministerial committee, is making arrangements to hold a workshop during 2004 to provide information to the stakeholder departments and to further consult on changes that are required. Through input from these departments, a policy document will be prepared for submission to Cabinet and, if approved, will form the basis for the preparation of legislation either by amendments to existing laws or the enactment of new laws or both. International assistance will be needed to accomplish this exercise.

In the meantime, officials from various departments have been attending relevant regional meetings, and workshops hosted by international and regional organizations, with a view to enhancing understanding of the relevant policy issues, ensuring regional

consistency and obtaining model legislation and information which can assist with the development of policy and legislation.

Given the limited resources available, further time will be required for the Parliament to proceed with the consideration and preparation of legislation.

In the interim, a careful review of existing laws and discussions with relevant government departments has resulted in the identification of some additional legislative and administrative measures which are in place and can be used to prevent and combat terrorism. Those discussions have also highlighted the needs of various departments and ministries in order to put in place an effective framework for combating terrorism.

This report outlines those additional existing measures and provides more detail as to the technical assistance required for Lesotho to comply with Security Council resolution 1373.

The document format follows the subparagraphs of the resolution, as requested in the guidance notes from the Committee.

Subparagraph 1(a) – Suppress the financing of terrorism

The response on this subparagraph is covered below in the comments on other subparagraphs, particularly 1(b)-(d). Work is ongoing on the development of comprehensive policy and legislation, a key component of which will address the financing of terrorism. As an interim measure, consideration is also being given to including some provisions directed at the financing of terrorism within the Money Laundering and Proceeds of Crime bill that is in draft form.

Subparagraph 1(b) – Criminalize the provision or collection of funds for terrorist acts

As indicated, there is no specific offence termed "financing of terrorism" as of yet. However, most, if not all, substantive terrorist acts would constitute offences such as murder, kidnapping, causing grievous bodily harm, unlawful possession of dangerous weapons, serious damage to property etc. under common law or by statute.

Therefore, those who provide property or money for use in the commission of specific terrorist acts, with knowledge of the intended use, would be caught by common law as parties (aiding and abetting, accomplices) to the offence. Similarly, those who agree to finance such acts or to collect or save funds for that purpose could be subject to prosecution for conspiracy. According to our Criminal Code, it is not necessary for the substantive offence to be committed for the aiding and abetting provisions to apply. In the case of conspiracy, proof of the agreement is sufficient without the need for any acts in furtherance or proof of anything additional.

It is acknowledged however that, as noted by the CTC, there are some questions as to the sufficiency of these ancillary offence provisions in the context of terrorist financing. Further, the offences would not extend to extraterritorial offences committed by nationals outside Lesotho. Thus, specific legislation is required. However, on an interim basis these provisions would be considered in terms of any financing activities that may arise pending the adoption of specific legislation. The Internal Security (General) Act 1984, as amended is relevant to the financing of terrorism.

While the Act was originally designed to respond to domestic subversion activity, some of its provisions are applicable in the context of terrorism more generally. The term used in the legislation is "subversive activity". This is broadly defined to include, *inter alia*,

- supporting, propagating or advocating any act or thing prejudicial to public order, the security of Lesotho or the administration of justice;
- inciting to violence or other disorder or crime, or counselling defiance or disobedience to the law or lawful authority;
- being involved personally or by directing, organising or training another person or persons, in the commission, attempted commission, preparation or instigation of any act involving the use or threatened use of violence for the purpose of putting the public or any section of the public in fear;

Section 8 makes it an offence to give, lend or otherwise make available money or property knowing, suspecting or intending that the money or property will or may be applied or used for all or in connection with the commission, preparation or instigation of any

subversive activity. It is also an offence to solicit or invite others to do so or to receive or accept property for that purpose. The offence applies to acts committed inside or outside of Lesotho.

For the time being, section 8 offences provision could be used in cases of alleged financing of terrorism.

Sub-paragraph 1(c) – Freezing assets of terrorists and terrorist organizations

This requirement has been provided for in the envisaged legislation on money laundering. Currently any sanctions required by a Security Council resolution or other UN or international or regional body action, are implemented through executive policy action.

There are currently no powers to seize cash at the border nor are persons entering Lesotho required to make currency declarations. Such powers are to be provided for through the Money Laundering and Proceeds of Crime bill.

While the Internal Security (General) Act 1984 makes no provisions for the freezing of assets, it does allow the Minister to declare an organization unlawful if he or she is of the opinion that the organization is involved in, or in promoting or encouraging, subversive activity. If a person is subsequently convicted of membership or profession of membership, giving or soliciting financial support or inviting persons to join, that organization, the court may order forfeiture of any assets in the person's possession or control at the time of the offence that were for the benefit of the organization.

Sub-paragraph 1(d) – Prohibit making property or financial or related services available

Currently there is no law which would directly prohibit this activity other than if, as mentioned above, the facts would support an argument of aiding and abetting or conspiracy.

The Money Laundering and Proceeds of Crime bill will provide for specific prohibitions in dealing in terrorist property and providing financial or other services.

Technical Assistance needs – Suppression of Financing of Terrorism

Considerable technical assistance will be required for the effective implementation of the envisaged laws and measures. Technical assistance by way of cross-sectoral training is needed on an urgent basis. **Officials in the Central Bank and in the financial institutions require training in "know your customer" practices and in the detection of terrorist funds and suspicious transactions. In order to implement these new offence provisions and to actively pursue the freezing of terrorist assets, both the police and the prosecutors will require training on these types of prosecutions and investigations.**

In addition, effective investigation and prosecution is hampered by **lack of physical equipment such as computers, which are important tools for these types of financial based investigations and prosecutions.** Financial assistance is needed to provide this type of equipment to the police and the prosecutors.

Sub-paragraph 2(a) – Support of terrorism including recruitment and supply of weapons

There are no specific "support of terrorism" offences, but the common law and some of the statutory provisions provide a comprehensive basis for prosecution of such activity. In addition to aiding and abetting, which would capture many forms of support, there are common law offences of incitement and obstruction of justice (e.g. applicable in harbouring cases) under which support activity would be criminal.

With respect to supplying weapons, there are strict legislative controls relating to the possession, sale or transfer, and import or export of weapons under the **Dangerous Weapons Act, the Internal Security (General) Act 1984 and the Internal Security (Arms and Ammunition) Act.**

Importation or exportation of weapons is permitted only under a permit issued by the Commissioner of Police. Weapons brought into the country or intended for export without such a permit are subject to confiscation.

Anyone supplying weapons to a terrorist organization or planning to do so would be caught by substantive or ancillary offences related to this legislation. The legislative framework is sufficient to address any weapons offences. However, out of an abundance of caution , consideration will be given to a particular offence for supplying weapons to terrorists, as well as to strengthening the Commissioner of Police's power to revoke weapons permits.

There is a weapons problem in Lesotho arising from the illegal trafficking of small arms between Lesotho and South Africa. The police are working on the detection and seizure of such arms and there is a legislated program to encourage voluntary surrender of arms without prosecution. Still this remains a major area of concern that could be exploited by terrorists. As was mentioned in the prior report, assistance is needed to further enhance border security and that would in turn help to decrease the smuggling of arms.

The exception comes again under the Internal Security (General) Act which contains several support offences including incitement to violence and disobedience of the law, sale or supply of dangerous weapons, receiving or providing training or drilling in use of arms or practice of military exercises, receiving or providing training or drilling in the use or making of dangerous weapons etc., and soliciting or inviting persons to join a prohibited organization. As the provisions are broadly framed and there are no specific offences for recruitment or training, they could be applied in cases of support to terrorists and terrorist organizations.

Technical Assistance needs – Support to terrorists and terrorist organizations

As mentioned, financial and technical assistance is needed to further enhance border security and reduce arms trafficking.

Training is further needed for customs authorities on the detection of weapons, explosives etc. at the various border points. There are no resources to obtain dogs trained in weapons detection, test kits or other sophisticated detection equipment. It would be particularly useful to have detection equipment that could be used at road and rail entry points with regard to large cargo containers. Assistance is

required to obtain these types of tools to detect weapons at the border.

Again the investigation and prosecution of these very specific support offences will require further training for police and prosecutors. Assistance is sought with this as well.

Sub-paragraph 2(b) – Prevention of terrorist acts including by early warning to other states

There are measures in place in various sectors that are designed to prevent terrorist activity.

General

The Internal Security (General) Act makes it a criminal offence for failing to disclose information that may be of material assistance in preventing subversive activity or in securing the apprehension, prosecution or criminal conviction of a person for the commission, preparation or instigation of subversive activity. However, it is prudent that it is mentioned that public appeals and education policies would be more effective in encouraging public cooperation in this area. Possible strategies for this will be considered in the general policy which is to be developed.

Security Agency/Defence

The Security Services and the military have an intelligence gathering capacity and information gathered can be shared with other countries, through early warning systems within SADC, eg SARPOCO – Southern African Regional Police Organisation. There are ongoing initiatives within SARPCO to set up a coordinated mechanism for the sharing and dissemination of such information and Lesotho is involved in the development and implementation of that program.

Police

The police have criminal intelligence officers who are responsible for gathering and disseminating intelligence information. Under the SARPCO initiative, efforts are underway to better coordinate intelligence information on a domestic level as between police, security

services and military and then to transmit that compiled information through SARPCO and Interpol for analysis and subsequent dissemination to countries. This initiative, as supported by SADC, will enhance the early warning capacity of Lesotho and other states within the region.

Civil Aviation

Measures at the international airport have been enhanced to try and guard against possible terrorist acts against passengers, airplanes or airports. Perimeter and building security at night have been augmented with the engagement of a private security firm, though further improvements are still required. The airport authorities have the necessary equipment to scan passengers and hand and checked luggage. some of this equipment is getting old, there will be need in the future to have it upgraded.

Assistance needs

Airport security could be further enhanced through the training of personnel, the installation of CCTV (which is being considered) and the use of electronic equipment for perimeter security. Financial assistance is required to implement those additional security measures. There is need for financial aid to rectify lack of separation of passengers from the public, through a physical reconfiguration of the airport building.

Sub-paragraph 2(c) – Denial of safe haven

Denial of safe haven for terrorists is covered mainly through extradition law and practice and immigration procedures and laws.

There is in place, the Fugitives Offenders Act of 1967, which deals with extradition matters and it uses the listing system. The procedure under this law is applicable to Commonwealth countries or those with which there is a treaty. Lesotho, except for Commonwealth countries, has such treaties with other countries, lately adding South Africa and China to the list.

Steps are being taken to review the existing extradition law with a view to the adoption of new, modern flexible legislation that will

minimize the possibility of Lesotho becoming a safe haven for terrorists.

The Department of Immigration is aware of the concerns regarding terrorism and the movement of terrorists. They will prevent entry of persons where there is a basis to believe they have been or will be involved in terrorist activities and they will seek to remove any persons if this type of information comes to light after they have entered. There are as well proposed amendments to the Aliens Control Act to strengthen the regime in terms of illegal entry.

Technical Assistance needs

Assistance in the development and drafting of extradition legislation would be of value. Training for police and prosecutors in extradition practice is also needed. The Department of Immigration is very keen to develop and implement an immigration policy with respect to counter terrorism. They urgently need assistance from experts with the elaboration of such a policy.

Sub-paragraph 1(d) – Prevent acts against other states

The information and intelligence sharing mechanisms described under 2(b) above and 3(a) below are relevant to this particular requirement as well.

The Prevention of Violence abroad Proclamation of 1963– provides some additional powers in this regard. Under this law, it is an offence for persons to conspire in Lesotho to commit, aid or procure, the commission of an act of violence in another state provided the act in question is criminal in the other state and in Lesotho. As well it is an offence to, in Lesotho, incite, instigate, command or procure another person to commit an act of violence in another state.

The police actively pursue suspicious patterns or activities that come to their attention and after investigating these matters as far as possible, they will provide the information to other interested states.

Technical Assistance needs

In order to complement efforts under existing laws, there is a need to further train and equip police officers to enable them to detect and prevent terrorist activity and to respond to terrorist situations. There is an urgent need for the development of sustainable mechanisms through which such training can be provided on an ongoing basis. The present police college has serious constraints in terms of space and resources for even basic training. Technical assistance is therefore required to develop programs through which sustainable training in these areas can be delivered.

Sub-paragraph 2(e) – Seriousness of offences and penalties

All of the substantive terrorism offences are amongst the most serious crimes and would carry significant penalties, generally in the range of 10 years to life depending on the circumstances. Most of the penalties are governed by common law as opposed to statute, it is the courts in Lesotho are likely to take very seriously offences related to terrorism and apply higher penalties.

In line with established practice in Lesotho, any new offences created will necessarily attract serious penalties.

Sub-paragraph 2(f) – Assistance with criminal investigations and prosecutions

Both the police and prosecution need to be afforded effective assistance with investigations and prosecutions.

Police

Lesotho and South Africa have an on-going and excellent cooperation with regard to assistance with evidence gathering and criminal investigations and prosecutions. The police on both sides of the border facilitate the voluntary attendance of witnesses to testify in proceedings. Similar assistance would be available should it be sought by other countries, particularly within the region.

Prosecution

Currently, the capacity to provide assistance with evidence gathering in criminal cases is limited to that which the police can do and the types of evidence that can be gathered without any compulsory measures, as there is no Mutual Legal Assistance in Criminal Matters legislation in place as of yet.

There is a mutual legal assistance treaty with South Africa and other such treaties are under negotiation. Steps are being taken to develop and draft mutual legal assistance legislation and assistance by way of model legislation and sample legislation is being provided by the Commonwealth Secretariat.

Sub-paragraph 2(g) - Prevent Movement of Terrorists

A review is being undertaken to access whether the immigration legislation needs to be further strengthened. SADC is in the process of finalising negotiations of a protocol which will facilitate movement of persons, goods and services. The bill will take some time because the region is cautious to ensure that there is sufficient capacity to manage any such new arrangement in a way that will prevent abuse by criminal and terrorist groups.

There is an initiative within the International Organization on Migration to consider further the harmonization of policies and legislation within the SADC region. Lesotho hosted a regional meeting on this subject in December 2003.

The previous report outlined in detail all of the measures that have been taken to date to enhance border control and prevent the movement of terrorists. However, additional measures, as outlined in that report, are still required and financial assistance is needed to implement those. Of particular urgency is the need for the computerization of entry and exit data, which is critical to tracking the movement of persons, and equipment at border points for the scanning of passport documents. Assistance is also needed to deliver training for all levels of existing staff and for new personnel that need to be recruited as the service is currently understaffed.

The government is phasing out the old passports and have introduced new passports which are digital so that they can be computer read at border points.

To prevent forgery and altering of passports and related documents there is currently an amendment being sought to the Passport and Travel Documents Act to increase the penalties for this offence.

The National Assembly has recently passed a bill which would introduce national identity cards – the National Identity Card bill. This also includes an offence relating to obtaining such cards through false or dishonest means.

Technical Assistance Needs

The Department of Immigration needs assistance to issue digital visas (these are currently still handwritten) and there is a need to purchase computer scanning machines for use at border points, particularly the airport.

Sub-paragraph 3(a) Exchange of operational information

Several agencies, in the context of the region and the continent, are involved in the exchange of information of this nature. The Security Services and the military are involved in the sharing of information for prevention and generally.

Customs

Lesotho is part of a customs union with South Africa, Botswana, Namibia and Swaziland. In addition to initiatives relating to harmonization of legislation, joint training etc. the union provides a mechanism for sharing of information and for improving the methods through which that is done.

Police

There are mechanisms in place for sharing intelligence, operational information and crime statistics and profiles on either a bilateral basis with South Africa and on a multilateral basis through Interpol and SARPCO.

In practice the police would also share information of this nature with countries outside the region, through diplomatic channels or again through Interpol.

Technical Assistance needs

Technical assistance is urgently required in this area by way of training of officers in intelligence analysis.

Sub-paragraph 3(b) – Exchange of Administrative/judicial information to prevent

A provision will be made under the new money laundering legislation for the exchange of information regarding suspicious transactions, which may cover terrorist financing.

Sub-paragraph 3(c) - Co-operation through agreements

Cooperation details with other states and or bodies with regard to this subject matter are covered in the responses under 2 (b), (c), (f) and 3(a) and (d).

Sub-paragraphs 3(d) and (e) – International Counter-Terrorism Conventions and other conventions and protocols

Lesotho is a party to five of the international counter terrorism conventions as follows:

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) 1963

Convention for the Suppression of Unlawful Seizure of Aircraft 1970 (Hague Convention)

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971(Montreal Convention)

International Convention for the Suppression of Terrorist Bombings 1999

International Convention for the Suppression of the Financing of Terrorism 1999

Lesotho has fully implemented the first three conventions through domestic legislation and laws for the remaining two conventions will be prepared as part of the comprehensive legislation.

Lesotho intends to ratify in due course the following conventions:

Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Aviation 1988

Convention on the Marking of Plastic Explosives for Purpose of Detection 1991

Convention on the Prevention and Punishment of Offences against Internationally Protected Persons 1973

International Convention against the Taking of Hostages 1979

Lesotho is a party to several other important international and regional conventions of relevance including the African Union Convention on the Prevention and Combating of Terrorism, Pelindaba Treaty relating to nuclear weapons, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psycho-tropic substances, the SADC Conventions relating to Drug Trafficking, the SADC Protocol on the Control of Firearms and other related materials, the UN Convention against Transnational Organized Crime and its protocols on Trafficking in persons and Firearms, and the Chemical Weapons Convention.

Lesotho is an active participant in ongoing negotiations in SADC and the AU on other relevant instruments for combating terrorism.

Sub-paragraphs (f) and (g) Preventing abuse of the Refugee Process and denial of extradition on the basis of the political offence exception

While Lesotho is a party to various conventions relating to the rights of refugees, on a practical level very few refugees come to Lesotho. The number currently is around 15 or 16 persons. There is a committee which handles the screening of refugees and a hearing of the claims

presented. This committee is very conscious of the need to guard against abuse of the process by terrorists.

As mentioned earlier, Lesotho's extradition legislation is quite old and steps are underway to review it. One of the issues that will be addressed in the review is the need to ensure that extradition in respect of alleged terrorist offences cannot be denied on the basis of the political offence exception.

Conclusion

The Government of Lesotho is fully committed to the global fight against terrorism and is dedicated all steps possible to the implementation of Resolution 1373 and the international counter terrorism instruments. However, limited resources mean that time is needed to fully develop an appropriate domestic policy and to elaborate and adopt the necessary legislation.

As highlighted throughout this report, effective implementation is dependent on technical and financial assistance. In summary, the areas of particular need are:

- cross sectoral training for police, prosecutors, customs and immigration officers, central bank and financial institution officials, and personnel within the civil aviation authority;
- equipment for border security, immigration control, civil aviation authority, customs, police, and prosecution service;
- assistance with the development of extradition legislation and immigration policy.